HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R.1938 of 2005

Date of decision : 30.10.2006.

State of Haryana and others .....Petitioners

versus

Dharam Singh .....Respondent

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Madan Gupta, Sr.DAG Haryana for the petitioners.

Mr.Shakti Bhardwaj, Advocate for the respondent.

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ORDER

HEMANT GUPTA, J. (Oral)

The challenge in the present revision petition is to the order dated 28.10.2004, passed by the learned First Appellate Court, whereby the delay of 200 days in filing the appeal was not condoned and the appeal was dismissed.

The plaintiff-respondent has filed a suit for declaration to the effect that refixation of his pay is null and void, illegal and unconstitutional. The said suit was decreed by the learned trial Court on 11.3.2003. Appeal against the said judgment and decree was filed alongwith an application for condition of delay of 200 days in filing the appeal under Section 5 of the Limitation Act, 1963. It is stated that the delay was not intentional but due to the exchange of correspondence with the competent authority. The learned First Appellate Court found that the explanation is not reasonable and consequently dismissed the application for condonation of delay.

After hearing the learned counsel for the parties, I am of the opinion that though there is delay in filing the appeal, but the delay is not

such which would raise a presumption of casual conduct of the defendants in filing the appeal. It has been held by the Hon'ble Supreme Court of India in **N.Balakrishanan versus Krishnamurthy, 1999 (1) Civil Court Cases-12 (SC),** that in an application for condonation of delay, there has to be some negligence, but negligence cannot be said the lack of existence of sufficient cause. In the present case, it has been alleged that due to exchange of correspondence with the competent authority, there is delay of 200 days in filing the appeal. There is nothing on record that there is any lack of bonafide in filing of the appeal with a delay of 200 days.

In view of the above, I am of the opinion that the order passed by the learned First Appellate Court, dated 28.10.2004, declining the condonation of delay is filing the appeal, suffers from patent illegality and irregularity which is not sustainable in law.

The revision petition is allowed and the delay in filing the appeal is condoned. The learned First Appellate Court is directed to decide the appeal in accordance with law.

Parties through their counsel are directed to appear before the learned Additional District Judge on 4.12.2006.

(HEMANT GUPTA)
JUDGE

October 30, 2006.
**mohinder*